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C O N F I D E N T I A L SECTION 01 OF 06 PANAMA 001553

SIPDIS

DEPARTMENT FOR WHA/CEN

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TAGS: [PREL](#) [PGOV](#) [PM](#) [POL](#) [CHIEF](#)

SUBJECT: (C) VISAS DONKEY: CORRUPTION 212(F) VISA

REVOCATION: WINSTON SPADAFORA

REF: A. 04 PANAMA 1274

[B](#). 03 PANAMA 3294

[C](#). 04 PANAMA 0823

[D](#). PANAMA 0629

[E](#). PANAMA 0778

Classified By: AMBASSADOR LINDA WATT FOR REASONS 1.4 (B) AND (D).

Action Request

[1](#). (C) Embassy Panama is seeking a security advisory opinion under section 212(f) of the Immigration and Naturalization Act in accordance with Presidential Proclamation 7750, suspending entry into the United States and revoking the visa of Winston Spadafora (DPOB: 22 DEC 1941; Panama). Embassy information indicates that during his ongoing tenure as a Supreme Court Justice, Spadafora has directly benefited from public corruption, specifically bribery, which has had and continues to have a direct and serious adverse effect on U.S. national interests, as defined narrowly and broadly. End Action Request.

Who Is Winston Spadafora?

[1](#)2. (C) Widely rumored to be Moscoso's lover, Winston Spadafora ran Mireya Moscoso's successful 1999 presidential campaign. He then served as Minister of Government and Justice until Moscoso named him to the Supreme Court in 2001. The Legislative Assembly by a single vote confirmed him and fellow Supreme Court magistrate Alberto Cigarruista on January 9, 2002 in a proceeding marred by egg throwing and accusations against President Moscoso for allegedly bribing legislators. Spadafora entered politics following the brutal torture and murder of his brother, Hugo Spadafora, in 1985 at the hands of Manuel Noriega's Panama Defense Forces. The murder marked a turning point for the dictatorship's fortunes. Spadafora worked unceasingly to publicize Noriega's involvement in his brother Hugo's murder, meeting frequently with U.S. congressional staff, and even going on an extended hunger strike. Blacklisted by Noriega, Spadafora was forced to close his law practice for lack of business. Not surprisingly, the experience left Spadafora a rabid opponent of the Democratic Revolutionary Party or PRD, which at that time was the party of the dictators.

What Did Winston Spadafora do?

[1](#)3. (C) Embassy possesses credible and compelling information indicating that during his 2002-2005 tenure as a Panamanian Supreme Court Justice (magistrado), Spadafora has willfully participated in and personally gained from an established system of bribery in which payoffs are actively solicited or accepted from claimants with cases before the high court. In some cases he actively solicited and accepted bribes on his own. Spadafora is hardly alone. He is part of a group of seven justices on the nine-member Court, who routinely accept bribes and issue legal decisions contrary to reason. He epitomizes everything that is wrong on the Court, where unbridled venality and a culture of entitlement to ill-gotten riches continue to reach new depths. (Note: Embassy may seek security advisory opinions for several more Court magistrates of varying political stripes. End note.)

Panama's Justice Problem

[1](#)4. (C) The Supreme Court's corruption, exemplified by Winston Spadafora, is a fundamental cause for the Panamanian public's lack of confidence in the rule of law. The politicized judiciary stands at the axis of a dangerously delegitimized political system. Increasing public disgust and cynicism about the system are fueled by accurate perceptions of official impunity, a culture of shameless entitlement, and growing indices of poverty and income disparity. The Court's actions and the attitudes they breed directly undermine Panama's democratic institutions. The Supreme Court is the final arbiter of disputes relating to interpretation of the law and must rule on issues relating directly to Panama's constitution. To the extent that justices base their decisions on personal enrichment instead of applicable law, they undermine not only the Court, but the legislative branch which enacts the laws and the executive branch which enforces them.

How Judicial Corruption Affects U.S. Interests

15. (C) Panama's politicized, corrupt Supreme Court damages U.S. interests in two ways: narrowly, through corrupt Court actions that negatively affect specific U.S. policy objectives; and broadly, by undermining respect for the rule of law, taxing an already impoverished polity, and corroding the bases of popular support for democracy. Both are serious impositions on U.S. interests, though the broad effect is the more dangerous one over time, as poor, cynical voters may turn for relief to anti-democratic populist demagogues, a la Venezuela's Hugo Chavez. More concretely, the Embassy's principal Mission Program Plan objectives include anti-corruption and increasing transparency in government. The actions of the Court have thwarted both objectives and, in the process, frustrated a sizable USAID program (see Para 12). The Embassy's Narcotics Affairs Section also is a major contributor to improving judicial processes, in particular with its "Culture of Lawfulness" program.

The Corrupt Court and the Torrijos Government

16. (C) How to reform Panama's judicial system is a conundrum for President Martin Torrijos. Torrijos, who was elected in 2004 on a "zero corruption" pledge, has not yet found a method of legally attacking the corrupt justices and forcing Panama's dysfunctional judicial system to take action against the obviously corrupt figures from the previous administration. In February 2005, after public name-calling among Magistrates unleashed a public outcry for Torrijos to fire them all, the president appointed a commission to investigate judicial reform. That commission will make its findings known in August 2005. (See PANAMA 0629, "PANAMANIAN SUPREME COURT FRACAS BLURS GOVERNMENT FOCUS ON SOCIAL SECURITY REFORM," Reftel D.) Embassy believes that revoking Spadafora's visa will give a big fillip to Torrijos's resolve to "do something" about the Court.

Shameless Cases, Senseless Decisions

17. (C) Panama's Napoleonic-law-based legal code requires the Supreme Court to adjudicate every case brought before it. Thus, virtually every important Panamanian legal case, quite regardless of merit, eventually winds up before the Court. And anything can become a legal case. (See Para 12.) Must the former President's sister account for \$8.5 million in public funds donated by Taiwan? Must the former President produce receipts and vouchers to show how she disposed of \$25 million in "discretionary" spending? Is a company under investigation for fraudulently obtaining government subsidies entitled to "damages" because of the investigation? Can a known drug trafficker be investigated and tried in Panama? Is a Panamanian-flagged ship illegally carrying arms to Colombian guerrillas and bearing falsified Panamanian police documents a proper subject for investigation? Does a developer (and close associate of Spadafora's) have to pay \$2.1 million back taxes to the authority that administers the reverted areas in the former Canal Zone? All these and more are standard fare for the Court, which always seems to come out on the wrong side of justice, contrary to the dictates of reason, with Magistrate Spadafora in the lead.

Running the Court as a Racket

18. (C) The Court sets the tone for society which has grown ever more cynical by the Court's own example, and that tone can be summed up as, "Everyone lies, cheats, and steals and no one is punished, so why shouldn't we?" Crudely put, the Justices run the Court as a racket. Panama's Supreme Court magistrates decide cases based on a careful calculation of political or financial benefits, to themselves, their friends, and their political patrons. They run the Court as a money-making venture, without regard for the law, the needs of the country, or the public good. Very often, the arcane legalisms and arguments that are the Court's stock-in-trade make it very difficult for the average person to follow what is going on and act shields the magistrates from public scrutiny. Nonetheless, people assume that venality rules at the Court and they are right.

For Sale to the Highest Bidder

19. (C) A well-placed, reliable source recently detailed for EmbOff the path of a typical Supreme Court case in Panama. He explained that in virtually every case brought before the high court, Justices openly discuss among themselves the size of the payments they expect and exactly how each Justice will rule. The Justices decide cases based on each party's perceived ability to pay. They then negotiate the price of their votes with the attorney from the designated "winning" party. They even prepare well-argued dissenting opinions to elicit money from the losing clients and attorneys, who pay to maintain good relations with the Court in the future. Legal arguments are irrelevant. Precedents are used arbitrarily, if they fit the Court's needs of the moment. "There is no such thing as a successful trial attorney in

Panama," the source said. Everything depends on money. (See 04 PANAMA 1274, "SOMETHING'S ROTTEN IN PANAMA'S SUPREME COURT," Reftel A.)

Follow the Money

10. (C) The Magistrates ask those who come before the Court "What ruling do you want? What do you want us to do? And how much are you prepared to pay?" After decisions are set, negotiations begin between the Justices and parties to the case. Once the bribe money is agreed upon, the Justices split it evenly, including those who lodge dissenting opinions. Settlements often are six figures and up. The source noted that even attorneys who believe they have an iron-clad case are willing to pay off the magistrates to build "good will" for future cases. (Comment: Magistrate Adan Arjona, whose personal relations with the other magistrates are bad, verging on openly hostile, appears not to participate in this graft. His frequent lone, dissenting vote is an indication of his probity. End Comment.)

Institutionalized Conflict of Interest

11. (C) The orchestrated logistics of the Court's purchased decisions are chillingly crass. Many of the Justices' alternates (Suplentes) work for and receive salaries from both the high court and influential Panamanian law firms pleading cases before the Court. They are the nexus between the Supreme Court and prosecution and defense attorneys. (Comment: "Conflict of interest" does not exist as a concept in Panamanian political culture, including the courts. Politicians and Supreme Court magistrates routinely use public office for private gain. The heart of the Supreme Court's business, in other words, is routine, institutionalized conflict of interest. End Comment.)

Thumbnails of the Court's Misdeeds and Spadafora's Role

12. (C) The Court's already notorious judicial behavior seemed to decline even further during the nine-month tenure of Cesar Pereira Burgos as Chief Justice, and continued after his October 2004 ouster (having passed the retirement age of 75 for public officials).

During 2004-2005, Panama's Supreme Court has

- twice ordered restitution of a controversial government contract and freeing of assets blocked by Comptroller Alvin Weeden, concerning the Ports Engineering Consulting Corporation (PECC) scandal (see Reftel B). (Spadafora voted with the dissenters on 6/11/2004 in the 6-3 vote, apparently to protect his good friend Weeden, who had gone after former president Ernesto Perez Balladares and Martin Torrijos's cousin, Hugo Torrijos.)

- quashed an investigation (9/17/2003) of several legislators who allegedly took bribes to approve the controversial CEMIS case, even after one legislator admitted taking a bribe on television. (Spadafora voted with the 6-3 majority. Arjona dissented. See Para 16.)

- in separate cases, threw out well substantiated charges against an Israeli arms trafficker on 3/30/2004 (see Para 13 below), and a Colombian narcotrafficker on 4/30/2004 (see Para 14 below), and freed them both. (In both cases, Spadafora voted with the 8-1 majority and Arjona dissented.)

- thumbed its nose in (late May 2004) at \$170,000 in FY2004 USAID funds to improve judicial transparency by pulling the plug on instant internet publication of Court decisions, an Arjona initiative. (This decision involve a ruling by chief justice Pereira Burgos, not a formal Court vote. According to a Court insider and Embassy confidant, Chief Justice Pereira and Spadafora in particular were "very interested" in keeping the Court's activities and decisions as much out of the public eye as possible.)

- blocked an investigation and public disclosure (5/11/2005) of how former presidents Moscoso and Perez Balladares each spent \$25-million-plus in "discretionary" funds. (Spadafora was not involved in this provisional decision. Arjona was the lone dissenter.)

- blocked an audit (2/28/2004) into the use of \$12 million in funds donated by Taiwan, purportedly to build Museo del Tucan and a public hospital, because the funds were deposited in Mar del Sur, a private foundation controlled by former president Moscoso's sister, Ruby Moscoso. (Spadafora voted with the 8-1 majority. Arjona was the lone dissenter.)

- blocked an order (6/22/2005) from a state finance bureau requiring the Figali Convention Center to pay \$2.1 million in back taxes. (Spadafora voted with Magistrate Hoyos in this 2-1 provisional decision. Arjona dissented. Jean Figali is a close friend and business associate of Spadafora. See Para 19 below.)

-blocked an ongoing investigation (6/24/2005) at Pana Habanos, a Panamanian cigar company under suspicion for fraudulently collecting \$2.3 million in state subsidies, and ordered the state to pay hundreds of thousands of dollars in damages. (Spadafora again voted with Magistrate Hoyos in this 2-1 decision. Arjona dissented. See Para 20.)

Yelenik-Otterloo -- Insufficient evidence?

13. (C) The Yelenik-Otterloo case (See 04 PANAMA 0823, "PANAMANIAN SUPREME COURT THROWS OUT CHARGES AGAINST ISRAELI ARMS SMUGGLER," Reftel C) involved a group of alleged conspirators, led by Israeli citizen Shimon Yelenik, who used a Panamanian-flagged vessel (the Otterloo) to smuggle arms (among them 5000 AK-47s and 2.5 million rounds of ammunition) from Nicaragua to Colombia, for use by the Colombian AUC Paramilitary Forces (Autodefensas Unidas de Colombia). Investigators of the Organization of American States (OAS) determined that Shimon Yelenik had fraudulently claimed to represent the Panamanian government in making the arms purchase and had used forged Panamanian National Police purchase orders to arrange the sale. The Otterloo filed documents claiming its destination was Panama, though in fact its true destination was Turbo, Colombia. Panama's Supreme Court Justices found the evidence did not link the case "sufficiently" to Panama and ruled they had no jurisdiction. They ordered Yelenik, who at that time was incarcerated in Panama, to be released immediately.

What About Henao Montoya?

14. (C) Reminiscent of Yelenik, the Court more recently ruled (date) that Panamanian prosecutors had not presented sufficient evidence to continue to hold known drug trafficker and money launderer Lorena Henao Montoya. They ordered her immediate release. La Prensa reported the ruling in an article titled "Another Ruling to Remember" that begins, "While the Supreme Court of Justice frees presumed narcotraffickers in Panama, in Colombia they put them behind bars." (Note: Colombian authorities arrested Lorena Henao Montoya immediately upon her arrival in Bogota. She is the sister of convicted drug dealer Jesus Arcangel Henao Montoya, who was remanded to USG custody in DATE after residing for several months in Panama under an assumed identity. Arrested in Panama in January 2004, she also was the wife of Ivan Urdinola Grajales, who headed the Colombian Valle Norte drug cartel until his murder in prison in 2002. Lorena later married Urdinola's bodyguard; both were suspected to be complicit in Urdinola's murder. End note.)

28 Volumes of Evidence Were Not Enough

15. (C) Supreme Court Magistrate Adan Arjona (protect), the Court's outspoken reformer and one of only two justices not in the Embassy's 212(f) cross hairs, gave AID Director and POL Counselor a copy of his dissenting opinion in the Henao Montoya case. Arjona's dissent notes that the arrest order contained 28 volumes of evidence and alleged that Lorena Henao Montoya used her driver's name to register her illicit property in Panama. Investigators presented evidence that allegedly identifies her as "the true leader of a macro-criminal apparatus." Arjona said that the Court's ruling on Lorena Henao Montoya and similar cases have had an extremely demoralizing effect on dedicated government prosecutors. (Note: The other justice who has not attracted negative attention from the Embassy is Esmeralda Arosemena de Troitino, whom President Torrijos appointed in September 2004 to finish out the term of then-Chief Justice Pereira Burgos. End note.)

A Good Month For Bribes

16. (SBU) Spadafora's role in the CEMIS corruption case has linked his name inextricably with a scandal that probably has evoked the most public revulsion in Panama's history. CEMIS -- an ambitious, \$400 million air, land, and sea infrastructure project, to be built on reverted land near Colon -- was approved by the Assembly on December 29, 2002. In highly contentious, controversial votes on January 9, the Assembly confirmed Winston Spadafora and Alberto Cigarruista. Then-President Mireya Moscoso allegedly bribed several PRD legislators in the PRD-controlled Assembly, one of them Carlos Afu, to ensure the confirmations. The new justices took the oath of office on January 12, and Moscoso signed the CEMIS bill on January 15. On January 14, 2002, PRD legislator Balbina Herrera (now Minister of Housing) publicly denounced Afu for taking a bribe to vote for Spadafora and Cigarruista. On January 16, 2002, Afu appeared on TV waving a large wad of cash, claiming it was a \$6,000 down-payment on a \$20,000 bribe to vote for CEMIS and crowing that he was not the only PRD legislator whose vote had been bought. (Note: During 1/16/2002 news conference, Afu kept his mouth shut about any Spadafora/Cigarruista bribes. Afu got away with bucking the PRD on the Spadafora/Cigarruista and CEMIS votes, kept his seat in the Assembly, never was prosecuted, and

finally won reelection as an Arnulfista (Panamenista) in the 2004 election. The CEMIS bribes allegedly came from the privately owned San Lorenzo Consortium. See PANAMA 0778, "PANAMA ATTORNEY GENERAL TESTS TORRIJOS ADMINISTRATION, REOPENS CEMIS AND SUPREME COURT BRIBERY CASES." See RefTel E. End note.)

CEMIS And Spadafora

17. (C) Following Afu's widely viewed TV escapade, the Public Ministry mounted an investigation into CEMIS for its allegedly corrupt practices, which CEMIS challenged before the Supreme Court. The Embassy has developed specific and credible information of a substantial payoff made to Spadafora for a favorable ruling in the CEMIS case. According to Embassy information, Spadafora, through his agent, solicited a bribe of \$500,000 to rule in the claimant's favor. The claimant eventually was successful in negotiating the payoff amount down to \$250,000. After the payoff, the case was decided in the claimant's favor. Following a Public Ministry investigation, in September 2003, with Spadafora voting with the majority, the Supreme Court voted 6-3 to close and nullify the Public Ministry's investigation. CEMIS construction never got under way.

Spadafora Shakes Down a Banker

18. (C) A Panamanian banker recently told POL Counselor the following story that implicates Spadafora in what essentially was a shakedown. A year or two ago a Panamanian company stopped making payments on a six-figure loan to his bank, only several months after the loan was made. The banker moved swiftly to seize the firm's major new equipment assets, which the firm had bought with the loan, as was his right under the terms of the loan. The firm's partners protested the seizure and threatened to sue. The banker then received a visit from one of the attorneys regularly associated with the Supreme Court. The attorney said, "We think you'll have to settle for 30%." "Why should I settle for 30%?" the banker countered. The lawyer then made a call on his cell phone. "Winnie," he said, "can you fax over that decision (fallo)?" (The banker confirmed that the lawyer was talking to Winston Spadafora.) The case had not actually reached the Supreme Court yet, the banker explained to POL Counselor, but Spadafora had written a decision in advance, with the expectation of spurring a speedy out-of-court settlement and pay-off. The "decision" finding in favor of the plaintiffs arrived by fax and the banker read it. The banker said he had no choice but to settle out of court for 30% of the principal. He assumed some portion of the remaining 70% was split between Spadafora and the attorney.

Figali Convention Center

19. (C) The Moscoso administration awarded a development permit to Jean Figali under terms that critics called overly generous. The result was the Figali Convention Center on the Amador causeway outside of Panama City and within the "reverted areas" under the jurisdiction of the Interoceanic Region Administration (ARI). An Embassy contact told EmbOff that in return for a "favor" Spadafora had done for him at ARI, Figali had paid part of the costs of Spadafora's luxury apartment. Figali by 2005 was in arrears to the tune of \$2.1 million in back taxes owed to ARI. Spadafora's Court decision suspended Figali's payments.

Pana Habanos

20. (C) Pana Habanos collected \$2.3 million in export subsidies based on what the Comptroller General claimed were inflated cigar export figures. The amount of subsidy due to the firm based on what the Comptroller determined to be the firm's actual level of exports should have been \$472,000. Thus the firm owed the state something over \$1.8 million, exclusive of damages and a criminal fraud prosecution. But in the world of Panama's Supreme Court the ordinary laws of physics don't always apply. Spadafora's Court decision reversed logic and found that the state had falsely accused Pana Habanos and owed it an unspecified amount of damages.

Why Proclamation 7750 applies

21. (C) Through sustained action that represents serious adverse effects on the national interests of the United States and severely undermines the democratic institutions of Panama, Winston Spadafora knowingly chose to abuse his position in Panama's highest court for his own personal enrichment. Spadafora represents much of what is wrong with Panamanian politics and exemplifies the overwhelming difficulty the GOP faces in enacting meaningful judicial reform. If corruption is rampant and unpunished at the highest levels of the its judicial system, Panama has little hope of success in confronting entrenched corruption elsewhere in government and the business community.

Current Visa/Travel Plans

122. (SBU) Spadafora has not been informed that he may be covered by Presidential Proclamation 7750, under section 212(f) of the INA. Spadafora currently has a valid B1/B2 visa that will expire on 18-DEC-2005. Embassy is not aware of any specific or immediate travel plans.

Embassy Recommendation

123. (C) Based on the facts of the case, Embassy recommends that Spadafora's visa be revoked, that he not/not be permitted to travel to the U.S., and that no waiver be granted should he apply for one.

124. (SBU) If Department authorizes visa revocation, Embassy plans to confirm the statutory grounds for revocation and the fact that it occurred if consulted by the press.

WATT